MBf Capital Bhd & Anor v Tommy Thomas & Anor (No 2)

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S2-23-52 OF 1996
KAMALANATHAN RATNAM JC
1 AUGUST 1997

Tort *— Defamation — Libel and slander — Award of damages — Whether damages for defamation could be based on an award of damages for personal injury*

Civil Procedure *— Damages — General damages — Quantification of damages — General damages quantified in the indorsement to the writ of summons and in the statement of claim — Whether the Rules of the High Court 1980 or practice direction disbar the plaintiffs from affixing a figure to indicate their worth in the form of loss of reputation — Whether court ought to fetter the right of a litigant to tell the world at large what his reputation is worth*

The plaintiffs, a public-listed company and a licensed stockbroking company respectively, sued the first defendant, an advocate and solicitor of the High Court of Malaya and a partner in the second defendant, a long-established firm of advocates and solicitors in Malaysia. The claim was for damages including exemplary damages for slander and libel by the first defendant, acting on behalf of himself and/or on behalf of the second defendant in/or about September to November 1995 to representatives of the International Commercial Litigation Magazine ('the magazine'), the words being subsequently published in the issue of the magazine for November 1995, which was distributed in Malaysia.

Each of the plaintiffs claimed, inter alia, a sum amounting to RM15m for slander and a further sum of RM15m for libel. Having filed his defence, the first defendant applied to strike out with costs, the words 'amounting to RM15m' appearing both in the indorsement to the writ of summons and in the body of the statement of claim. In support of his application, the first defendant stated, in his affidavit, that neither the Rules of the High Court 1980 ('the RHC') nor any practice direction issued so far, required the quantification or stipulation of a specific sum in respect of a claim for general damages. He further averred that exemplary damages clearly fell into the category of unliquidated damages and consequently ought not to be quantified until final adjudication of the claim, assuming one was successful. He was also of the view that as a matter of practice and/or tradition, prayers for general damages were never quantified in suits filed in Malaysia.

In reply, the plaintiffs stated in their affidavit that neither the RHC nor any practice direction prohibited the quantification of the damages claimed. Counsel for the plaintiffs further argued that even the Defamation Act 1957 did not prohibit the quantification of damages.

Held, dismissing the application with costs:

(1) Awards in personal injury cases and defamation actions serve different purposes, have different elements and different histories. The purposes of an award of aggravated compensatory damages in a defamation action are different from the purposes of an award of general damages in a personal injury action. Therefore, damages for defamation could not be based on an award of damages for personal injury (see p 411C–I); *Carson v John Fairfax & Sons Ltd* (1993) 113 ALR 577 and *Cassell & Co Ltd v Broome* [1972] 1 All ER 801 followed.

(2) There is no rule in the RHC nor in any practice direction to disbar the plaintiffs from affixing a figure to indicate their worth in the form of loss of reputation although what has been in practice is that the claimants in defamation suits have all along been adopting the procedure relating to accident cases where, rightly so, general damages ought not to be quantified in the statement of claim. No court ought to fetter the right of a litigant to tell the world at large what his reputation is worth. It is for the plaintiff to establish that claim by way of proof in court. To attempt to strike out the right of an indignant litigant who intends to give fair notice to the other side of his claim is being unjust to him (see p 412D–F).

[Bahasa Malaysia summary

Plaintif-plaintif, sebuah syarikat awam dan sebuah syarikat broker saham berlesen masing-masing, mendakwa defendan pertama, seorang peguambela dan peguamcara Mahkamah Tinggi Malaya dan rakan kongsi dalam defendan kedua, sebuah firma peguambela dan peguamcara yang telah lama bertapak di Malaysia. Tuntutan adalah untuk ganti rugi termasuk ganti rugi teladan bagi slander dan libel oleh defendan pertama, yang bertindak bagi pihak dirinya sendiri dan/atau bagi pihak defendan kedua pada atau sekitar September hingga November 1995 kepada wakil-wakil International Commercial Litigation Magazine ('majalah tersebut'), perkataan-perkataan itu kemudiannya disiarkan dalam keluaran majalah tersebut bagi bulan November 1995, yang diedarkan di Malaysia.

Setiap plaintif menuntut, antara lain, jumlah sebanyak RM15 juta untuk slander dan jumlah lanjut sebanyak RM15 juta untuk libel. Setelah memfailkan pembelaannya, defendan pertama memohon untuk membatalkan dengan kos perkataan-perkataan 'berjumlah RM15 juta' yang terdapat dalam kedua-dua pengindorsan kepada writ saman dan dalam isi pernyataan tuntutan. Sebagai menyokong permohonannya, defendan pertama menyatakan, dalam afidavitnya, bahawa baik Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') mahupun mana-mana arahan amalan yang dikeluarkan setakat ini tidak memerlukan pengiraan atau penetapan jumlah yang khusus berkaitan dengan tuntutan untuk ganti rugi am. Beliau selanjutnya

menegaskan bahawa ganti rugi teladan dengan jelasnya termasuk dalam kategori ganti rugi jumlah tak tertentu dan dengan itu tidak patut dinyatakan kuantitinya sehingga penghakiman muktamad tuntutan, dengan anggapan seseorang itu berjaya. Beliau juga berpendapat bahawa sebagai satu perkara amalan dan/atau tradisi, tuntutan untuk ganti rugi am tidak pernah menyatakan kuantiti dalam guaman-guaman yang difailkan di Malaysia.

Sebagai jawapannya, plaintif-plaintif menyatakan dalam afidavit mereka bahawa baik KMT mahupun mana-mana arahan amalan tidak melarang pengkuantitian ganti rugi yang dituntut. Peguam bagi pihak plaintif-plaintif selanjutnya berhujah bahawa Akta Fitnah 1957 pun tidak melarang pengiraan ganti rugi.

Diputuskan, menolak permohonan dengan kos:

(1) Award dalam kes-kes kecederaan diri dan tindakan-tindakan fitnah mempunyai tujuan-tujuan yang berbeza, mempunyai unsur-unsur yang berbeza dan sejarah yang berbeza. Tujuan-tujuan award ganti rugi pampasan dalam tindakan fitnah adalah berbeza daripada tujuan-tujuan award ganti rugi am dalam tindakan kecederaan diri. Oleh itu, ganti rugi untuk fitnah tidak boleh berdasarkan award ganti rugi untuk kecederaan diri (lihat ms 411C–I); *Carson v John Fairfax & Sons Ltd* (1993) 113 ALR 577 dan *Cassell & Co Ltd v Broome* [1972] 1 All ER 801 diikut.

(2) Tiada sebarang kaedah dalam KMT atau dalam mana-mana arahan amalan untuk menghalang plaintif-plaintif daripada meletakkan suatu angka untuk menunjukkan nilai mereka dalam bentuk kehilangan reputasi walaupun apa yang diamalkan adalah pihak menuntut dalam guaman-guaman fitnah telah selama ini menerima-pakai prosedur berkaitan dengan kes-kes kemalangan di mana, dengan betulnya, kuantiti ganti rugi am tidak patut dinyatakan dalam pernyataan tuntutan. Tiada mahkamah yang patut menghalang hak litigan untuk memberitahu masyarakat umum apa nilai reputasinya. Plaintif-plaintif mestilah membuktikan tuntutan itu dengan cara pembuktian di mahkamah. Percubaan untuk membatalkan hak litigan yang marah yang berhasrat memberikan notis yang wajar kepada pihak yang lain adalah tidak adil kepadanya (lihat ms 412D–F).]

Notes

For cases on defamation, see 12 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 138–261.

For cases on damages, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1097–1103.

Cases referred to

Carson v John Fairfax & Sons Ltd (1993) 113 ALR 577 (folld)

Cassell & Co Ltd v Broome [1972] 1 All ER 801 (folld)

Chattell v 'Daily Mail' Publishing Co (Ltd) (1901–02) 18 TLR 165 (refd)
Ong Ah Long v Dr S Underwood [1983] 2 MLJ 324 (refd)
Rustom K Karanjia & Anor v Krishnaraj MD Thackersey & Ors AIR 1970 Bom 424 (refd)

Legislation referred to

Defamation Act 1957
Rules of the High Court 1980 O 22 r 1

Raja Aziz Addruse (*Darryl Goon* and *HY Chooi* with him) (*Raja Darryl & Loh*) for the applicant/first defendant.
VK Lingam (*V Sivaparanjothi* and *R Thayalan* with him) (*V Siva & Partners*) for the respondents/plaintiffs.

Cur Adv Vult

Kamalanathan Ratnam JC:

Facts

The plaintiffs, being a public listed company and a licensed stockbroking company respectively, sued the first defendant, an advocate and solicitor of the High Court of Malaya and a partner in the second defendant, Skrine & Co — a long established firm of advocates and solicitors in Malaysia. The claim was for damages — including exemplary damages for slander uttered by the first defendant, acting on behalf of himself and/or on behalf of the second defendant in or about September to November 1995, to representatives of the International Commercial Litigation Magazine ('the magazine'), namely to one David Samuels — the words being subsequently republished in the issue of that journal for November 1995, which was distributed in Malaysia. There was also included a claim for damages including exemplary damages for libel in respect of the words so republished and attributed to the first defendant and the second defendant in an article under the heading 'Malaysian Justice on Trial' — contained in the issue of the said journal for November 1995 — which was distributed in Malaysia. There were also prayers for an injunction against the defendants and for costs.

Each of the plaintiffs claimed, inter alia — both in the indorsement and in the statement of claim against the defendants — a sum amounting to RM15m including exemplary damages for slander and a further sum amounting to RM15m including exemplary damages for libel. Having filed his defence, the first defendant applied (encl 11) to strike out with costs in the words 'amounting to RM15m' appearing both in the indorsement to the writ of summons and in the body of the statement of claim.

The applicant's case

In support of his application, the first defendant affirmed an affidavit in which he stated that neither the Rules of the High Court 1980 ('the RHC')

A nor any practice direction issued so far, required the quantification or stipulation of a specific sum in respect of a claim for general damages. Whilst classifying damages broadly into liquidated and unliquidated damages, the first defendant averred that exemplary damages clearly fell into the category of unliquidated damages and consequently ought not to be quantified until final adjudication of the claim — assuming one was B successful. He contended that by way of contract, liquidated damages such as a debt claimed can and must be quantified in the prayers. This would include special damages and particulars of such damages have to be provided to justify the sum claimed.

It was his view — based on experience — that as a matter of practice C and/or tradition, prayers for general damages are never quantified in suits filed in Malaysia. He pointed out that in effect, the plaintiffs were each claiming RM30m for slander including exemplary damages and a further sum of RM30m including exemplary damages for libel against the defendants. Raja Aziz, for the first defendant, submitted that these amounts D stipulated were in themselves grossly excessive and exorbitant and thus extortionate and totally without any precedent in Malaysia for a defamation action. It was the applicant's contention that in choosing to adopt this extraordinary practice of quantifying the general damages claimed as aforesaid, the plaintiffs had set in train, consequences which would have far-reaching and oppressive effects and which were highly prejudicial. E Such a practice, it was submitted, had a gagging effect with a potential exposure to severe financial liability. It had a psychologically intimidating and chilling effect unfairly imposed on a defendant who, more importantly, had not even been proven to have committed any wrong. It would also have an effect in terrorem and would cause others to distance themselves F from the defendant. This would also, in the particular circumstances of this case, discourage frank and candid discussion of the conduct of advocates and solicitors by members of the Malaysian Bar and the Bar Council itself. The applicant argued that he would suffer grave injustice and irreparable harm if the quantification of the plaintiff's claim for general damages was not struck out.

G In his submission before me, Raja Aziz submitted that the principle of not quantifying general damages must generally apply to all species of tort and not just to the tort of negligence. Citing 32 *Atkins Court Forms* (2nd Ed) at p 30, learned counsel for the applicant said:

> H Particulars of general damages, ie unliquidated or unascertained damages, are not required to be specifically pleaded.

He argued that only at the conclusion of the case, would the trial judge be able to say what the plaintiff was worth, after having analysed the entire evidence. Raja Aziz referred me to *Carson v John Fairfax & Sons Ltd* 113 ALR 577 where the High Court of Australia was of the view that an I appellate court, in deliberating on the quantum of a defamation verdict, may consider verdicts in personal injury cases for the purpose of comparison. He therefore urged this court to equate an award for damages in a suit for defamation to that of an award for damages in personal injury cases.

After Raja Aziz had concluded his submission, En Zainur Zakaria who was in fact co-counsel for Mr K Anatham — a partner in the second defendant — and who was in no way involved in this application, wished to address the court. I allowed him to do so as an officer of the court and to assist it. Whilst basically reiterating the submission of Raja Aziz, he maintained that it was not for a person to say what he is worth. He submitted that it was for the court to determine how much the claimant was worth after liability had been established and upon evidence being adduced during the assessment of damages. It does not lie in the mouth of the claimant to say how much he is worth. If he had wanted to do so, he said, then the plaintiff must particularize why he said he was worth that much.

The respondents' case

In reply to the applicant's affidavit, one Patrick Chen Yee Ching, the President-Legal of both the plaintiffs, affirmed an affidavit. He stated therein that neither the RHC nor any practice direction prohibited the quantification of the damages claimed. He denied that the sums claimed were grossly excessive or extortionate. He averred that the first defendant spoke and published the alleged defamatory words as pleaded in the statement of claim with the knowledge and intention that the words would be republished and figured prominently in the magazine — in a feature article about the Malaysian judiciary, the plaintiff's alleged connivance or participation in the corruption of the Malaysian judicial system by the plaintiffs' counsel and about the plaintiffs' alleged responsibility for that corruption. He further averred that the first defendant was aware that the magazine was available on sale to the general public at the material time. The first defendant was also aware of the significant global readership and influence of the magazine and that it being a foreign international publication, would carry a mass circulation and credibility amongst its wide readership whilst discrediting and disparaging the plaintiffs' business and trading reputations. It was the contention of the plaintiffs that the first defendant must not be caught by any element of surprise of the plaintiffs' claim and that the quantification was pleaded to forewarn the first defendant of the plaintiffs' exact and precise claim. He concluded by stating that it was not for the first defendant to dictate to the plaintiffs how to plead the writ and statement of claim.

In his submission, Dato' Siva pointed out that even the Defamation Act 1957 did not prohibit the quantification of damages. He referred me to *Chattell v 'Daily Mail' Publishing Co (Ltd)* (1901–02) 18 TLR 165. In that case, which was an action for libel, the plaintiff pleaded in the statement of claim £1,000 as damages. No defence was delivered and an interlocutory judgment was signed for damages to be assessed. The jury returned a verdict for the plaintiff for £2,500. The plaintiff thereupon, without amending the statement of claim, signed judgment for this amount. The defendants applied for a new trial upon the ground that the damages were excessive. The Master of the Rolls thought that:

> ... unless the plaintiff accepted £1,000, there should be a new trial. If the plaintiff accepted the sum there would be no costs of the appeal; if a new trial took place, all the costs (with a certain exception) would be reserved.

Dato' Siva also referred the court to *Rustom K Karanjia & Anor v Krishnaraj MD Thackersey & Ors* AIR 1970 Bom 424, where the plaintiff pleaded in the statement of claim, a sum of Rs300,000 as damages in a suit for libel. The plaintiff claimed that the offending articles which he reproduced in the statement of claim were false and malicious and as a result of the same, the plaintiff was injured in his character, credit and reputation and in the way of his business and had been brought into public hatred, contempt and ridicule. Therefore, he assessed the damages he suffered at Rs300,000. After a trial lasting 101 days, the court found the defendant liable. The award was however reduced on appeal to Rs150,000. On the basis of these two cases, Dato' Siva argued that quantification of damages in a defamation suit ought to be allowed. He also urged me to reject the argument that personal injury awards ought to form a basis for comparison in awarding damages in defamation. He also pointed out that since O 22 r 1 of the RHC allowed for payment into court, the defendants ought to be put on notice of the plaintiffs' intended claim as an indicator to the defendants as to the amount they might wish to pay into court.

The court's findings

At the commencement of his submission, Raja Aziz submitted that I should not hear this application because this issue had already been argued before Rahmah Hussain J and that the same was subject of an appeal to the Court of Appeal. Proceeding with this case before me, he submitted, was an unnecessary exercise which would involved costs. In opposing this submission, Dato' Siva argued that there was no application for stay pending the decision of the Court of Appeal and he submitted that it was his clients' instructions to proceed with the application. I was not convinced with Raja Aziz's submission that I should not hear this application. Surely, I am entitled to consider and give my own reasoned judgment on an issue which might have already been canvassed before another judge. If I am to be gagged, just because there was already a judgment of a court of concurrent jurisdiction on a point of law, then judicial thinking would not be allowed to have free rein and the various views of judges, on a similar point of law on which the development of the law was based, would be curtailed. I am not so prepared to restrict myself. I will deliver a judgment on this same issue.

Should damages for personal injuries be a basis for comparison

In running down cases — which used to form the bulk of cases in the civil division prior to the increase in the jurisdiction of the sessions court — the issue was one of negligence, that is, the failure of the defendant to take reasonable care for the safety of another. The plaintiff, in order to succeed in a case in negligence, ought to prove that there was a duty of care owed to him by the defendant; that there was a breach of such duty; that as a

result of such breach he had suffered damages which could not have been foreseeable; and that it was not too remote. The essence of the tort of negligence is carelessness and a failure to take care. There is no element of a deliberate wanton desire to injure. If such were present then the perpetrator would be subjected to a criminal charge.

When considering an award of damages in personal injury cases, the court seeks to compensate the plaintiff for the pain and suffering and loss of amenities which that person has suffered or will suffer in the future. I can do no better than to refer to the decision of the Federal Court in *Ong Ah Long v Dr S Underwood* [1983] 2 MLJ 324, where Syed Agil Barakbah FJ said at p 334:

> It has to be borne in mind that damages for personal injuries are not punitive and still less a reward. They are simply compensation that will give the injured party reparation for the wrongful act and for all the natural and direct consequences of the wrongful act, so far as money can compensate (see *British Transport Commission v Gourley* [1956] AC 185 at p 206 and *H West & Son Ltd v Shephard* [1963] 2 All ER 625). The award under general damages should be a global sum commensurate with the injury sustained and not a full compensation which might result in ruinous consequences to the defendant.

In fact, in my book *Practical Approach to Assessment of Liability and Damages in Tort* (1986 Ed) relating to the award of damages in accident cases, I said:

> General damages which are awarded for a tortious act committed upon a person or his property is a civil remedy which has as its aim to put the injured party back as it were as far as is possible to his original position maintained by him prior to the tortious act which resulted in injury or damage.

On the other hand, in defamation cases, the allegation is that the alleged defamatory statements were false and malicious, thus injuring the plaintiff's character, credit and reputation and in the way of its business and that it had been brought into public hatred, contempt and ridicule. In other words, there is an imputation of false and malicious conduct calculated to hurt the plaintiff. There is a wanton act motivated by malicious intent. In comparing it with the intent required in a criminal case, one can be easily tempted to borrow the phrase mens rea. There is no doubt that the intent is to cause mischief by that publication. In such circumstances, by no stretch of the imagination can I equate an act of negligence to a wanton malicious conduct intent to cause mischief. The two are poles apart and in antithesis to each other. Besides, in accident cases, although the tortfeasor is the owner or driver of the vehicle, the ultimate paymaster is the insurance company that had insured the tortfeasor's motor vehicle pursuant to the compulsory insurance that every vehicle on the road must possess. Any increase in awards of damages in accident cases, disproportionate to the existing authorities would, needless to say, have reverberations in the insurance industry causing a cry in Parliament by the insurance lobbyists for an increase in premium with the result that the common man in the

A street would have to pay increased premiums. This is not the case in defamation suits.

It is my view that there is no better person to assess one's value than the plaintiff who complains that he has been defamed. It is he and he alone who is the best judge to decide what he is worth. It is totally wrong to B prevent a litigant from giving fair warning and notice to his opponent of his value and worth which the latter has transgressed. If the defamation was unintentional then this is the opportune moment for the penitent defendant to mitigate by way of an apology. If he stands by his statement and pleads justification or fair comment or any other available defence and if he fails at the trial, he cannot but blame himself if a substantial award is made.

C In *Carson v John Fairfax & Sons Ltd* (1993) 113 ALR 577, McHugh J in giving his dissenting judgment said at p 629:

> Awards in personal injury cases and defamation actions serve different purposes, have different elements and different histories. They are not comparable. I think that it is a mistake to believe that the pain and suffering D component of a personal injury award can be isolated from the other components of that award and then compared to an award of compensatory damages in a defamation action. As the discussion on aggravated damages has shown, the purposes of an award of aggravated compensatory damages in a defamation action are different from the purpose of an award of general damages in a personal injury action. E
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> In a personal injury action, general damages, inter alia, seek to compensate the plaintiff for the pain and suffering which that person has suffered or will suffer in the future. No element of punishment or deterrence enters into an award in a personal injury action. Nor is the tribunal of fact in such an action entitled to increase or reduce its award by reasons of the F conduct or state of mind of the parties or allow its indignation at the defendant's conduct to be reflected in the verdict ... . Accordingly, I am unable to accept the view that awards for pain and suffering in personal injury actions provide any guidance as to what is a reasonable award of damages in a defamation action.

G With this dissenting judgment, I am in full agreement. I am further fortified in the view that I have adopted — that damages for defamation cannot be based on award of damages for personal injury cases by relying on the words of Lord Hailsham in *Cassell & Co Ltd v Broome* [1972] 1 All ER 801 (HC) at p 824:

> H In actions of defamation and in any other actions where damages for loss of reputation are involved, the principle of restitutio in integrum has necessarily an even more highly subjective element. Such actions involve a money award which may put the plaintiff in a purely financial sense in a much stronger position than he was before the wrong. Nor merely can he recover the estimated sum of his past and future losses, but, in case the libel, driven I underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge. As Windeyer J well said in *Uren v John Fairfax & Sons Pty Ltd* (1967) 117 CLR 118 at p 150:

> 'It seems to me that, properly speaking, a man defamed does not get compensation for his damaged reputation. He gets damages *because* he was injured in his reputation, that is simply because he was publicly defamed. For this reason, compensation by damages operates in two ways — as a vindication of the plaintiff to the public, and as consolation to him for a wrong done. Compensation is here a solatium rather than a monetary recompense for harm measurable in money.'

This is why it is not necessarily fair to compare awards of damages in this field with damages for personal injuries. Quite obviously, the award must include factors such as injury to the feelings, the anxiety and uncertainty undergone in the litigation, the absence of apology, the reaffirmation of the truth of the matters complained of or the malice of the defendant. The bad conduct of the plaintiff himself may also enter into the matter where he had provoked the libel, or where perhaps he had libelled the defendant in reply.

Can the plaintiffs quantify a figure?

I find that there is no rule in the RHC nor in any practice direction to disbar the plaintiffs from affixing a figure to indicate their worth in the form of loss of reputation. What has been in practice is that the claimants in defamation suits have all along been adopting the procedure relating to accident cases where rightly so, general damages ought not to be quantified in the statement of claim. On the contention of the applicant that such a claim of RM30m is extortionate, it is my considered judgment that no court ought to fetter the right of a litigant to tell the world at large what his reputation is worth. It is for the plaintiff to establish that claim by way of proof in court. To attempt to strike out the right of an indignant litigant who intended to give fair notice to the other side of his claim, is being unjust to him. The scales of justice must be evenly balanced. After all, the protagonists will meet in court, be subjected to the acid test of cross-examination and the worth of the plaintiffs' reputation can be subjected to the clearest scrutiny. Far from having a psychological and chilling effect as contended by the applicant, the stipulation of the sum claimed ought to motivate the defendants to ensure a thorough preparation for the trial.

I must not forget to make mention of the view expressed by En Zainur Zakaria. His final submission had caught my attention. It was open no doubt for the first defendant, as suggested by En Zainur Zakaria, to seek further and better particulars of the plaintiffs' alleged worth of RM30m. Perhaps, if the plaintiffs were able to give such satisfactory evidence of their worth, the trial proper could itself be shortened by the exchange of such particulars.

For the purposes of this application, I need not go into the merits of the case. Suffice it for me to know that from the pleadings alone, the plaintiffs were justified in stipulating a figure as damages to be claimed.

In both the cases cited by Dato' Siva, namely *Chattell v 'Daily Mail' Publishing Co (Ltd)* (1901–02) 18 TLR 165 and *Rustom K Karanjia & Anor v Krishnaraj MD Thackersey & Ors* AIR 1970 Bom 424, there was no

challenge taken by the defendant that the amount ought not to have been quantified.

One other factor that I have considered in holding that the plaintiffs were entitled to stipulate the quantum they were asking for, is O 22 r 1 of the RHC. If the first defendant was so minded, having sought the particulars of the plaintiffs' worth to his reputation and assessing the evidence that he alone will so far know, and if he is inclined to do so, he might wish to pay a reasonable sum, commensurate with the plaintiffs' claim, as payment into court. In so far as running-down matters are concerned, the various awards for injuries to various parts of the anatomy have all been documented in the law journals and law reports. Whether it is the arm of a pauper or a prince, the quantum of damages for a loss of that arm is fixed by precedent and any variation in the award would be minor. Any major deviation would be struck down on appeal. That is not the case with defamation suits. The reputation of a pauper cannot be equated to that of a prince. Who else can be the best guide to the court and to the defendant as to the claimants' worth. It is my judgment that it is none other than the claimant himself. In the circumstances, I am dismissing the application with costs.

Application dismissed.

Reported by Mariette Peters-Goh